

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, July 17, 2012
6:30 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order

2. Roll Call of Members

Linda Edelen	Present
Lynn Ekelund	Present
Don Mazzeo	Present
Bob Heinrich	Absent
Tim Nicholson	Absent

3. Additions/Corrections to the Agenda

Don Mazzeo: Do we have any additions or corrections to the Agenda as it has been posted?

4. Approval of agenda

Don Mazzeo: Seeing none.

Lynn Ekelund: Move approval of the agenda.

Linda Edelen: Second.

Don Mazzeo: All in favor say aye. Opposed. Agenda has been approved.

5. Approval of minutes from June 19, 2012

Don Mazzeo: We need an approval of the minutes of June 19, 2012.

Lynn Ekelund: Yes. Motion to approve.

Linda Edelen: Second

Don Mazzeo: All in favor say aye. Opposed. Motion is carried.

6. Business

a. Minor Subdivision Review/Approval

Discussion and possible vote on an application from Eagle Eye Development, LLC for the minor subdivision of land located at 309 Front Street, further identified by Sussex County Tax Map and Parcel # 2-35-20.08-10.00

Don Mazzeo: Do we have a representation of the application here? Please come forward to the microphone. State your name and address, please, for the record.

Charles Adams from Adams, Kemp, 217 South Bay Street, Georgetown, DE: I'm here to represent Eagle Eye or Lynne Celia who had a family emergency and couldn't be here this evening. So she still wanted the meeting to go forward and we've been in close contact about all the details about this project, so I'm here to present the project and answer any and all questions about this project. I don't know if any of you were involved with the Eagle Eye Division, which was a townhouse subdivision for this property. None of you. Okay. Robin, I don't know if we need to talk about that, but probably not, as far as Lynn...

Don Mazzeo: My recommendation, Chuck, would be to present this application as it is being presented to this commission and to the Town of Milton tonight.

Charles Adams: This project is assuming that starting from scratch and just providing a minor subdivision plan for this property. We've done many minor subdivision plans in the Town of Milton and gone through the procedures for these developments; small, one, two lot subdivisions; three lot subdivisions; one lot, maybe divided into two; minor subdivisions. This one is considered a minor subdivision. We reviewed it with Robin. Robin walked Lynn and myself through minor requirements, being in a marine zoning and what we're trying to do is provide the minimum square footage, frontage area and all the requirements for the zone, as far as residential use and turn it into pretty much a low density project. Low density consists of six lots, in an area of 7.02 acres...

Lynn Ekelund: Can I stop you there?

Charles Adams: Yes.

Lynn Ekelund: What is a remnant area?

Charles Adams: It would be a residual or basically it's a property that's remaining after the development is complete; well fee simple ownership for each lot owner, would be as these lots are presented here. They would own in common the remnant area, which would be similar to an open space area.

Lynn Ekelund: Do you envision a Homeowner's Association?

Charles Adams: Yes, oh yes. Mainly because, this area is certainly undevelopable; it's all wetlands and marsh areas. Within this area it's within the upper high ground area and it has been known as a docking facility for a previous Bait and Tackle and Marina type facilities there, both were kept here in the past and they've sold bait and so forth here in the past. What they would like to do, and we laid out this area so it's accessible to every lot in the subdivision. They would then access this area, common area, from their own lot for their use as a common usage area. Together, they could apply to the Army Corps of Engineers for reconstructed dock facilities, if they see fit; as they see fit.

Linda Edelen: The Homeowners?

Charles Adams: The Homeowner's Association.

Linda Edelen: The Association.

Charles Adams: Yeah.

Linda Edelen: You refer to that as common area? And the remnant area is not common?

Charles Adams: It's common. It's just that we call it remnant in most of our platting and planning, it could be called common. I think in the minor subdivision regulations, I'm not sure what the common area requirement is. I don't think there is one. We've never had one, because we've always done small, two lot, three lot subdivisions; requiring no common elements as a major subdivision would require; as a common element. This one, there's so much available land and there's water frontage and the only water frontage that is accessible are these two cove areas; so if you were to project these lots to the cove areas, you would knock out accessibility by the other lot owners. So we've opened up the cove areas, that were previously docked and permitted to all of the owners within this subdivision and only this subdivision. These six owners can access this land and these docks, and that's it.

Lynn Ekelund: So that remnant area which you're talking about; everything but the six lots is the remnant area. That's what you're saying. All of that, not just that corner?

Linda Edelen: Oh, it is?

Charles Adams: All of this.

Lynn Ekelund: And all the way over there, that's all...

Charles Adams: Every bit of land outside of these dark fee simple bond ownership areas.

Lynn Ekelund: Okay, so that's owned, then, by these six lot owners.

Charles Adams: That's right. It would be owned by let's say Eagle Eye, until at such time and the way they configure Homeowner's Association is a 50/60% thing where when 50% of the ownership; let's say when a third lot is bought, then the agreements and legal entities are formed to take over this area. Until such time, it would be under Eagle Eye Development.

Linda Edelen: The area that you describe as potential access to the water, that's part of this remnant area. It doesn't have a different kind of an ownership.

Charles Adams: That's right. It's all one ownership. It would be owned by Eagle Eye until it went to the Homeowner's Association.

Linda Edelen: So you've just on the map delineated that area for the benefit of us.

Charles Adams: Oh, yeah, well this would be... It has it's own frontage and this frontage meets the required frontage for the minimum lot, as far as frontage, even though the frontage is not accessible; but you could look at this as... It would be a tax parcel number; undevelopable tax parcel number; only for use by the six lot owners within the subdivision and that could be done through a legal entity, a Homeowner's Association.

Lynn Ekelund: If I could interrupt for just a second. I'm looking at Section 29, Number 10 of the Town Charter.

Seth Thompson: The Enumeration of Powers?

Lynn Ekelund: Enumeration of Powers, yes, and then it goes to the third page, which is number 10. Does number 10 apply to that what is defined as remnant area; in that it is precluding the general public from enjoying the use thereof of the water, the pier...

Seth Thompson: I think it's important to understand the purpose for the Enumeration of Powers Section of the Town Charter. What that does is, that's the General Assembly saying these are the abilities that the Town Council has. So, for instance, just to compare it to number 11, just below it; in essence, it says the Town Council can control the plans and systems of plans for generating and manufacturing electricity.

Lynn Ekelund: Gotcha.

Seth Thompson: So if the town wanted to do that, it's empowered to do so by this section. So with that frame of mind, if you look at subsection 10, it's talking about the fact that the town, if it elects to do so, can construct basically a series of jetty's and bulkheads within the town. So it really wouldn't apply in the situation of privately owned land.

Lynn Ekelund: It does not apply. Okay.

Seth Thompson: This would be more a situation where if the town decided that for some reason they needed to construct bulkheads for the preservation of something, that they don't have to get some sort of special right to do that; they're given that right by the Town Charter.

Lynn Ekelund: I see. Thank you.

Charles Adams: The way this would proceed is she would, or Eagle Eye, would file for a demolition permit for everything that's on this property; all the concrete, all the buildings, everything that exists there now and they would be removed from that property. We have made some changes. We've added the dedication, which was pointed out; DelDOT would ask for this as well; to dedicate whatever DelDOT wants; they would meet their needs. The notes say 10', so 10' would now be dedicated; it's a 30' road, 10' would be dedicated on our side and future 10' on the other, creating a 50' road on Front Street, in the future.

Lynn Ekelund: That's Mr. Kerr's point number 6?

Charles Adams: Yes. The sewer and water service on the property of some sort, would have to be worked out with Tidewater and the Town of Milton on the upgrade to get the individual water meters and sewer clean-outs to be attached to this existing sewer. All the construction would have to be Federal Emergency Management Agency code; that was pointed out that it is in a flood plain; a lot of property in Sussex County is in a flood plain. Half of our business is flood certifications. What will happen on this property, every building would have to go through a Federal Emergency Management Agency approved plan. I would recommend pilings in this

case, with minimal, typically in a flood zone, you would have pilings up to the first floor; or up to the second floor above; possible parking under with a minimum square footage. Federal Emergency Management Agency code is I think 300 or 500 square feet. Under the building with mechanicals and electricals above the 9' minimum. In that 300 to 500 square feet could be a walk up. It would be a keyed walk up, so that privacy and security for the individual that would enter the lower area walk up and go up to the first floor living area. The first floor living area would be the only living area to Federal Emergency Management Agency code standards and all of the first floor areas would only be mechanical and electrical and storage areas. That would be placed on the plans, as well; that all Federal Emergency Management Agency code would be met for every construction on these six lots.

Don Mazzeo: Have you addressed Mr. Kerr's concerns about sidewalks, curbs and gutters on the new plans that are on the table?

Charles Adams: No. We have not. I would like to discuss it, of course. The Town of Milton has sidewalks here and there. In every other minor subdivision that I've done, sidewalks were not required. They may have been there anyway; maybe, I can't remember if they all were there or not there. I just rode out there myself and I saw there is a small sidewalk in front of the sewer plant and then there's a gap for the next property down, until you get to this property. So I'm not sure what's going to happen to this property, but I don't see any problem with it. I would like to see it as what I would call multi-modal use and I'm not sure where it would go to if it came as far as the construction of it. I wouldn't... As far as when you get down into these areas, if it can't go in DelDOT's right-of-way and you would have to get an Army Corps of Engineers permit possibly to build it. I would hate to have to see her to through an Army Corps permitting procedure, just to put a sidewalk through this area here. I think it wouldn't be a problem up until you get to this area right here. Unless it went on DelDOT and then that would be... If it would be okay, I could say the sidewalk could end to service the upland areas of the subdivision through half of Lot 6, if that would be permissible. As far as curb and gutter combo up with sidewalk, I don't think there's... That could be up for discussion, as well. I think there's a high bank there. I'm not sure how that would work out, but if the town sees that it needs it's sidewalk there, then it could be done. It could be designed. I would rather keep it off the DelDOT right-of-way and on the remaining ground of Eagle Eye and the lots, if possible. The fence will be removed. The existing chain link fence is to be removed. There may be another ornamental or privacy low fence constructed and that could be combined with the walkway. What I would like to see if the walkway is required, that it wouldn't be a curb and gutter type of walkway in the road; requiring a DelDOT permit and extension of the roadway of Front Street, as an expanded roadway. I don't think this development

warrants expanded roadway and I don't think DelDOT would say that it warrants expanded roadway in this case. So if they could keep the sidewalk off of DelDOT, that would be great. I don't know, Bob, how you feel about that, but that's sort of the way I would like to do the project.

Don Mazzeo: Is there anything else you would like to present this evening?

Charles Adams: No. I can't think of any other items.

Lynn Ekelund: Before you sit down, Bob do you have a comment on his curbs, gutters, sidewalks compromise?

Bob Kerr, CABA Associates: The ordinance requires curb and sidewalk; interval curb and gutter and sidewalks separated by a 3' wide grass strip. Mayor and Council have, on occasion waved that. I guess I'm the one who probably pushes more not to do that, because we do end up with gaps in town because of that. The adjoining property is owned by the Town of Milton and hopefully someday they'll fill in that portion of curb and sidewalk. The curb might be there. Robin is shaking his head no. Maybe I'm thinking just the wastewater treatment plant, but that has been the preferred way of going forward with new construction. We're trying to fill in. Milton is a very walker oriented community, so there is a lot of walking and we're trying to provide sidewalks to accommodate the people, or the residents.

Lynn Ekelund: Thank you.

Linda Edelen: Chuck, I don't understand several notations on the map that talk about proposed combined entrance use by Lots 5 and 6.

Charles Adams: Yes, that's been corrected. This is a typical DelDOT minor subdivision procedure or the way that they would like to see things done. There's a combination entrance at each entrance.

Linda Edelen: I saw that.

Charles Adams: So that note should have been... It was copied over by mistake; it should say Lots 1 and 2, 3 and 4, and 5 and 6 as a combo and what happens is there's one entrance; typically with DelDOT it's a 40' pipe and two driveways with a 5' median between, after you enter and turn off the road, then you branch off to the entrance into your own personal driveway.

Lynn Ekelund: Oh, I didn't understand that either.

Charles Adams: So what happens is that DelDOT requires the entrance to be installed prior to the sale of the lot and each individual has their own driveway. The pipe is usually typically on the dedicated part of DelDOT, so that each person has really their own driveway and their own personal maintenance area; that entrance would all on the dedicated portion of the DelDOT right-of-way.

Linda Edelen: The minimum setback for the front yard is 40'. Are you planning to be on that setback?

Charles Adams: No. Personally... Well all of the views from this properties

are in the rear. I envision all of the homes being towards the rear of the lot, with a winding driveway coming up each individual and they would elevate their building as tall as the town permits, meet Federal Emergency Management Agency code and have a view of the Broadkill River through the trees in the fall.

Linda Edelen: What is that height of the town?

Lynn Ekelund: Forty feet, I believe.

Linda Edelen: Forty feet?

Lynn Ekelund: And you will be meeting 40'; you won't be coming back?

Charles Adams: Well, with the missing front first floor, that's 8 to 10', they would need to get two floors, at least, at 40', I think. I'm not sure if the Town of Milton uses 40' from the Federal Emergency Management Agency 9; or 40' from the average grade; or 40' from center line; but all the towns use a different one.

Don Mazzeo: What do our professionals indicated?

Charles Adams: Sussex County uses 40' from 9, in this case; so 49' would be the upper end of the limit. The Town of Lewes uses center line of the road opposite the house. Some other towns use the average grade next to the house. So, I'm not sure what Milton uses, but whatever they use it will be held and reviewed during the construction process for each home. Robin would be the reviewer of the construction plans for each home. She may have requirements in her Homeowner's Association of minimums; I don't know. I haven't seen those minimums for her requirements, but she may have minimums; minimum square footage; minimum on-site parking; minimum...

Linda Edelen: Are those in the works or have they already been...

Charles Adams: I haven't seen them, but if it's a Homeowner's Association it should have them to accompany the Homeowner's Association.

Lynn Ekelund: A segue on Linda's question, the requirement is front yard 25'; side yard 10'; back yard 25' and your...

Charles Adams: There's plenty enough room on these lots. These are...

Lynn Ekelund: But you're talking a front yard setback of...

Charles Adams: Well, that's the minimum and the minimum would probably be on the plan. If she wants to put another minimum of 60 to; well in this case, these lots are 200' deep; so she could easily live with 100' setback, in my opinion.

Linda Edelen: And the idea is to get back in the lot.

Charles Adams: It's even a little higher as you get back. Here's the high point of the whole property right here. So if, well, she would have the minimum setbacks on the plan and in this Homeowner's Association list of restrictions, she may have another one. I haven't seen it yet, but, it seems like it might be there.

Don Mazzeo: Have we determined where we do our measurements in the Town of Milton?

Robin Davis: For building heights?

Charles Adams: For building heights. What does ground zero start at; average height of the lot; 9', which Federal Emergency Management Agency was requiring as the baseline?

Robin Davis: In Section 220, number 6 – that's the Definitions and it talks about building height. The vertical distance measured from the average elevation of proposed or existing finished grade to the highest point of a roof for flat roofs, to the deck of a Mansard roof, and to the mean height between eaves and rafters for gable and hip roofs.

Charles Adams: So it actually could exceed 40' if it was a gabled or hip roof; they use an average there.

Don Mazzeo: Conceivably then, the applicant may still return a request a height variation, is that what I'm hearing?

Lynn Ekelund: That's what I was asking.

Charles Adams: Well, I haven't estimated the height of the house or houses or the deed for the height of the houses to be exceeded and to me, I think it should be held according to the existing code and if any one owner wants to come in for a variance, then they would come in; that one owner; if that's what you're asking me.

Don Mazzeo: That's what I'm asking.

Charles Adams: That one owner, if he said I need a bigger house or whatever, he'd have to come in and say I need X amount of room.

Seth Thompson: And that would have to follow the usual procedure for that kind of variance; there would have to be the application; whatever deposits are needed for... I'm not sure if our area variances require notice to go to adjoining property owners, but there would be notices that go out.

Don Mazzeo: In our letter from Mr. Kerr, he enumerates number 11, where it's reading and I'll put it into the record, "The entire parcel is located within the 100 year flood zone, which has an elevation of 9', the highest contour shown on the parcel is elevation 7'. The property and adjoining Front Street are subject to flooding. Article 188-25 of the subdivision ordinance concerns lands subject to flooding or uninhabitable land and states the following: "Lands subject to flooding and land deemed by the Town Council to be uninhabitable shall not be platted for residential occupancy, nor for such uses that may increase the danger to health, property, or aggravate the flood hazard. Such land within the plot shall be set aside for such uses as will not be endangered by periodic or occasional inundation. It will not produce unsatisfactory living conditions and shall be adequately drained and filled in accordance with regulations of any government body having jurisdiction over the same. Such land will not be calculated as open space, but will be included in calculating the total acreage for open space." I question, do you have a method in mind to prevent the additional flooding that will occur when these homes are built or the land is developed?

Charles Adams: Well, I can address a certain number of items. The previous project was very dense and encompassed a lot of rooftops, a lot of impervious areas, parking areas; it was a combination of commercial and residential above I believe and it did get through Sussex County Sediment Erosion Control permitting, DelDOT permitting. They obtained all permits for this property.

Don Mazzeo: How many years ago was that?

Charles Adams: It was like five or six years ago.

Bob Kerr: It was '07, I think.

Seth Thompson: 2007.

Robin Davis: Yes, that's correct, I think it was '07.

Don Mazzeo: Seven years ago.

Charles Adams: Everything's under the current regulations. That's the first thing I want to say. Second thing is, that's gone. And they're replacing it with a very minor and green type of subdivision that is minimal impact for creation of stormwater. Stormwater is not really a problem here. It's the backing up of the river. The river is what floods these areas, these low lying areas; not the drainage from the land; it's the backing up the rivers and the rivers come and flood. This is not going to create a lot of stormwater for causing more problems in this area right here. This is basically just a... It's very low. It's sea level. Basically this is sea level in this area where the problems occur. They would meet all of any requirement, required by Sussex County Erosion Sediment Control and to me it's low impact; you won't see any stormwater leaving this area, from what I can see when I see the property now I don't see stormwater leaving and there's more impervious area on this property right now, then will be here when six houses are built. There's a big concrete area; there's storage buildings; there's a house; so basically they will not be creating any more impervious area by building six homes, then what's on there right now.

Don Mazzeo: You just mentioned, however, that you're going to have driveways that probably will be 40 or more feet long. Is that not going to be impervious?

Charles Adams: They may be impervious, but nothing like what's there now, or what would have been there if the project was approved and they would have to be the two and the ten-year storm. Every project I do I try to beat the 100-year storm anyway, as far as no water leaves the area until after 100-year storm. That's the way I look at every project I do, even though 2 and the 10 is all that's required by the State of Delaware. So I can tell you that if we have to do a stormwater project here, and you don't see many stormwater projects done for individual homeowner's in the area like this; it's all for condensed developments with many streets, many houses.

Don Mazzeo: I fully recognize there's no streets being added here; you're utilizing Front Street according to the plan that you presented to us. One

of my major concerns, is that indeed, while you may have homes that are going to be built there on pilings, because there's not going to be any other way to put a home over there, they're going to get stranded out there. We know it floods; you know it floods; potentially the new owners will also be informed that it floods; and I would not like to be having Milton in a position of having to go out and rescue people out there, every time we get water backing up to the river, which I understand, your project has no control over that.

Charles Adams: That's right.

Don Mazzeo: I understand that. But we're putting people in harm's way and I just read it, here, it says that it shall not be occupied if it's going to put the homeowner's or potential residents in harm's way. I just have a tough time understanding why we would want to put a home that's already in a position of getting flooded today and add more homes there? We know that floods. That's a given and I don't believe anything that you're going to do is going to make it worse; I understand what you're saying, but it exists today and unless you're going to come up with a method of alleviating that flooding, on that property, taking on all the river water and bringing it on to your property, the remnant property, if that be the case. I don't think you're undertaking is quite that expensive.

Charles Adams: I mean Sussex County is one of the most densely populated areas below the 100-year flood plain, is exactly what you're talking about and Sussex County is not eliminating construction in the 100-year flood plain.

Don Mazzeo: Sussex County, this is Milton, we can always...

Charles Adams: I'm just saying, generally speaking.

Don Mazzeo: I understand.

Charles Adams: You can build in a 100-year flood plain; you can successfully do it. The flooding that I see is here, of course, I'm not sure what the town has in mind for these areas; if DelDOT is working on this; or exactly what; Eagle Eye just wants to do something with the land. They spent a lot of money for this property. Big ideas went down the drain and this is very minimal. This is as minimal as you can get to ask to do something like this on this property. If you had seen that other project, it would have blown your mind then, because it was intensely developing all of this.

Don Mazzeo: Recognizing that that property, as it was being developed seven years ago, is not under our discussion this evening.

Charles Adams: True. Yeah.

Don Mazzeo: I and the commission have to look at what's being presented today, so I separate the past and look at what we're looking at today in the present.

Charles Adams: Well all I can say is that as a designer we would do the best that we possibly can to protect any individual. Any individual buying

in a flood plain knows that they have flood insurance; if they have a mortgage, they have flood insurance; and anybody buying in a flood zone will know that immediately when their bank tells them they need a flood insurance policy. So, we do everything possible to keep the improvements out of the flood plain; well everything will be out of the flood plain.

Don Mazzeo: Everything's on the flood plain.

Charles Adams: All the improvements out of the flood plain.

Don Mazzeo: No matter what you do from road bed, back to the river, it's in the flood plain, inclusive of the road bed.

Charles Adams: Right.

Seth Thompson: Chuck, that actually raises a question from the legal perspective. Certainly the County has it's rules in terms of how to develop in the flood plain. Milton's language doesn't track with the County and in the quoted section in Article 188-25, the County doesn't seem to have something that's comparable. I'm curious. Just from the very sentence, it seems to say parsing out the important parts here, lands subject to flooding shall not be plotted for residential occupancy." That seems to be a bar as far as that kind of use and then it goes on to say that "The land can be used for such uses as will not be endangered by periodic or occasional inundation, will not produce unsatisfactory living conditions and shall be adequately drained and filled." I guess that's my concern. That very first sentence seems to indicate that it shouldn't be used for residences and I went back and I looked in our Zoning Code in Chapter 220 and certainly there are a number of uses that are listed there as primary uses. One of which is a single family residence. Now I know that this didn't come up in the prior development, because we weren't under the subdivision ordinance and it was going to remain one parcel under one ownership. I guess I'm having a little bit of trouble, does Eagle Eye have some sort of different interpretation in terms of how that...

Charles Adams: Well she had no idea, as far as I know, that Milton had observed that rule of regulation in it's history, that I know of and that's all that one could go on.

Seth Thompson: And really, I guess if you're to read the Code in it's entirety, the argument is, again, you have this permitted primary use of a single family residence, so if a parcel currently exists, somebody can build a home on it and in the flood plain; which the Town Code seems to have adopted the 100-year flood plain; there's a site plan approval and that factors in all that flood proofing. There doesn't seem to be something similar to subdividing. So the way I read it, if you read it again, in it's entirety, trying to make all these pieces mesh, I think there's an argument that somebody can develop a single parcel that currently exists with a single family residence that's in the MR district, but they wouldn't be able to subdivide it, absent, I guess a variance or a waiver from Council of Section 188-25. Is that...

Charles Adams: Well, again, I'm not an attorney and I can't really speak to that. I don't know of any enforcement in the past of it in Sussex County in general.

Seth Thompson: Right, the County seems to allow subdivision of property that's within the 100-year flood plain.

Charles Adams: If this was a major subdivision, I would agree with you 100%. It's a minor subdivision, so in that intent I think it could be looked at with somewhat different eyes, because it's a minor subdivision and not intensely developed in any fashion, whatsoever. So that's the way I was looking at it and again, I didn't look at that specific article.

Seth Thompson: Obviously that's a much more global issue. At the very end of that section, it then says "The land will...". I'm reading, Land Subject to Flooding, based on the other section of the Code, Chapter 125 as being the 100-year flood plain. It says "Such land, again, meaning land subject to flooding, will not be calculated as open space, but will be included when calculating the total acreage for open space." Which is interesting. It seems to say you can't use it for open space, but in determining how much open space you need, it counts towards your total. And obviously all of this...

Charles Adams: Again, that's for major subdivisions, which require open space. This is a minor subdivision requiring no open space.

Seth Thompson: Well the way our open space code section reads, it says if you're under ten acres, then you don't need to provide open space, you can make some sort of monetary equivalent, I gather, so that the town can set up a park by pooling those assets. But we're above ten here.

Don Mazzeo: But this parcel is... This is above ten, so now you've met a new threshold that requires you to have certain amenities that you can't have because it's in the flood plain.

Seth Thompson: I was trying to go through this earlier and thinking well all this counts toward that 5% that's needed for open space, but none of it could be considered open space; which poses a problem obviously. There's the larger issue in terms of residential use for subdivision in general. They're in the same section, that's why I was curious if you had given them the _____.

Charles Adams: During the whole review of this with Robin and so forth, and trying to develop what can be done and not, that was never mentioned or even brought up in any fashion. That's why I didn't.

Seth Thompson: Gotcha.

Linda Edelen: I would like to be able to make an argument that there is a distinction in this provision 188-25 for major vs. minor, but I don't see it anywhere.

Don Mazzeo: There isn't.

Linda Edelen: This is the Sub-Division Chapter.

Don Mazzeo: Yes, it is. Look, before we go any further, I'm going to ask if

members of the commission have any additional questions, concerns of the applicant, while we're still here with the applicant right in front of us, before we move into our discussions independently.

Lynn Ekelund: I do note that if they're going to be making any sorts of distinctions that they do make distinctions between procedures for approval of minor sub-division and major sub-division, so obviously it's recognized in the Code that there are distinctions between minor and major and that distinction is not drawn in that particular paragraph, which makes me believe that it applies to all sub-divisions; that's just... Again, I'm not a lawyer either, but that's just the way I read that.

Don Mazzeo: And that's why we have Seth on the table this evening, as all evenings.

Lynn Ekelund: I understand that. Let me just see on the driveway, Bob Kerr's point number 12, the driveway note for drawings lots 1, 2, 3 and 4; that's what's revised up here?

Charles Adams: That's been revised. Yes Ma'am.

Lynn Ekelund: What about his comment regarding the existing fire hydrant shown on Lot 5? No information is available concerning it's condition or flow capacity.

Charles Adams: It would have to be tested and that would have to be analyzed during the next step of making connections.

Lynn Ekelund: So you, tonight, though have not addressed that comment of Mr. Kerr's?

Charles Adams: We called Tidewater and the city about utilities, but not made any other arrangements.

Lynn Ekelund: Okay. Something that's not provided as a location for stormwater management facilities, you previously said that you don't do that.

Charles Adams: If they're required, they would be shown, either lot by lot or as a... To me it would be a lot by lot issue.

Lynn Ekelund: Okay. And that's something that would be required by...

Charles Adams: It could be required by Sussex County; sometimes on a lot by lot basis when they're not looking at a major sub-division, then they're not looking at a central facility in this case, because of the low impact. If it's less than 5,000 square feet of coverage for each lot, they don't look at it as a major sub-division coverage under the stormwater regulations.

Lynn Ekelund: So that would be the Conservation District?

Charles Adams: Yes.

Lynn Ekelund: But have you requested any letters of no objection from any of these outside agencies?

Charles Adams: No, that would be the next step.

Lynn Ekelund: That's the next step.

Charles Adams: All of the agency approvals. No agency approvals.

Lynn Ekelund: Okay so basically what we see right here is what we get, right now?

Charles Adams: As it processes through the agency's approvals, things may change.

Lynn Ekelund: Okay.

Don Mazzeo: I am reading also from the Milton Code 220-18, which is the Marine Resources Use District, which this property is part of and there's two parts of that; Section A, Sub-Section 4 and 5. I would like your response if you have one and it says, "To further protect scenic views of the river and 5) which is to encourage public access to the river." I think, neither of those conditions are met with this particular property because of it's size, location and potential development and do you have a comment to that?

Charles Adams: Well, I do have a comment. As far as these areas, these wooded, low lying wetlands areas would not be touched or disturbed in any way; nothing would be done out there. This area was intended to be for the property owners themselves. I originally did indicate essential road that came up into this area; it was thought by not only me but everybody, that that should come out. This is private property. This was a minor sub-division, more like a minor sub-division and public access is not warranted or needed for this project.

Don Mazzeo: Okay. Any other questions, comments from the commissioners? Alright, seeing none, I would like Mr. Kerr, if you would, just briefly to go through his checklist that he has and if the latest set of plans has been presented to us, meet any and all of your comments 1 thru 18.

Bob Kerr: The only set of drawings I have are the original. I have not seen what was presented this evening.

Don Mazzeo: You've not seen these? Oh, okay. That's kind of awkward. Without the engineer's review of the most recent set of plans, I'm a little taken aback.

Robin Davis: I actually think the set of plans that Mr. Adams' has brought, are the same as what you have before you.

Charles Adams: I have made a few... Well, I got these yesterday.

Bob Kerr: From hearing what Chuck has said to this point, it sounds like he's changed the dedicated right-of-way...

Charles Adams: The driveway.

Bob Kerr: And the notes for the lots and other than that, it's more or less the same thing, so I think the comments to the most extent still apply.

Don Mazzeo: Okay, so based on that statement alone then, let's briefly go through.

Bob Kerr: Sure. Jumping down to number 3, he's met the minimum lot requirement of 10,000 square feet; each lot meets that. He's exceeded the setback, 25 vs. 40'; the other setbacks are in accordance; there was an

existing site plan that was approved by previous Planning and Zoning, that has since expired; and really doesn't count for anything other than yes there was one at one point in time, but...

Don Mazzeo: Right.

Bob Kerr: And Chuck has addressed, I believe, the additional right-of-way to be dedicated along the street.

Don Mazzeo: 10'.

Bob Kerr: We've talked about curbs and gutters, number 7, 8 and I would recommend that we make sure that the curbs and gutters, number 9, get constructed all at the same time so that we don't have the problem that we've had in some sub-divisions where they try to put that on the home builder or the owner of the lot and you end up with piecemeal; one of the lots may never be sold or developed. The open space, whether this is required to have open space and whether open space is just maintained, the code to my engineer brain wasn't clear and I didn't know whether you wanted to discuss that a little bit further; whether the code requires open space that is available to the public, or if open space dedicated to a Homeowner's Association and privately held, is acceptable.

Don Mazzeo: Which is what Chuck has indicated this evening. It's going to be privately held, the entire parcel.

Bob Kerr: Correct. We've discussed the 100-year flood plain and the elevation 9' and I'm sure that will be discussed a little bit more. We've taken care of driveway notes. There's a 4" water main, so water services will have to be run to each lot. There's an existing hydrant that's shown. So far in the town records, I don't show it anywhere and don't have any flow information on it, so whether it was really grown up around with a lot of bushes or something, but at some point we didn't know it was there. There's an existing gravity sewer line. Tidewater will need to verify that. Number 16, again, it's really not something that concerns this commission, it's more that I wanted the applicant to know, because we are having a lot of problems within town and that looks like it will be coming before you in the near future, to clean up some of those items.

Don Mazzeo: Gee, thank you.

Bob Kerr: You're welcome. If you recall we did one out near Dr. Wagner's office a little while ago.

Don Mazzeo: We did one already.

Bob Kerr: There's a list of things that should be either were provided or need to be provided on the final and then we need letters of no objection. One of the problems, not really in here, but when I was reviewing this, one of the difficulties was that this is a minor sub-division and per the approval procedures you would normally almost give approval this evening and forward that to Mayor and Council, because typically there aren't construction drawings showing curb and sidewalk as they exist or it's just one or two lots; it's a fill-in type thing. So this is a little different in

that I'm not really sure how the procedure goes forward from there, as far as construction drawings review and the outside comments; those types of things; because that typically is not part of a minor.

Don Mazzeo: This is a unique minor, I will admit. It was many unique facets to it, apparently.

Bob Kerr: Yes, Sir.

Don Mazzeo: Okay. I still have some very strong reservations about having homes built along that flood prone area. Admittedly your project will not enhance, probably not enhance, any additional flood; but it's there and it exists today and I just find it objectionable to ask potential property-owners to build a home and then expect the Federal Government, Federal Emergency Management Agency, to bail them out when it floods, when you know it's pretty much going to flood at some point. People have to drive there every day, park their cars, certainly they're going to have to move when they know the flooding is going to come; but, maybe they're not home that weekend and oh well, there goes your cars. Well Federal Emergency Management Agency will take care of that; or there are other assurances. That's how I feel right now and I would ask the commissioners if they have any other comments, before we go through a vote.

Linda Edelen: My concern is just exactly what we have in the sub-division Town Charter that's been put here by Bob's letter. Have we been given an answer that this it's okay.

Seth Thompson: The plain meaning of that section seems to indicate that it's not supposed to be for residential uses. Now again, residential use in the context of a sub-division; somebody can develop an already existing single parcel, because a permitted use is a single family residential home. It's only in the context of sub-division that the quoted section applies; but that's our context here; so, which is difficult. Again, based on it's plain meaning, it seems to indicate that it's not supposed to be developed for residences in the sub-division context and when we were looking at the Zoning Code earlier, if you look at the intent that the Chairman quoted in terms of Section 220-18, it seems to discuss a mixture of waterfront related uses, including recreational park, open space and boater uses. The intent doesn't seem to mention anything with regard to residences; so unfortunately I wasn't here when this specific language was codified, so what we're left to do is try and read the code as a whole and ascribe a meaning to it and it certainly seems to indicate that residential uses wouldn't be for sub-divisions in that zone. The only language that I could find to the contrary and I always try to look at things with an analytical view, but in Section 125, which governs our flood plain, it does mention the fact that... I will get the language exactly.

Lynn Ekelund: 125-9, Uses, Restrictions and Procedures?

Linda Edelen: 125?

Lynn Ekelund: I don't think you have that.

Linda Edelen: No I don't.

Seth Thompson: And the exact language I was looking at was in 125-3 that discusses the applicability and it does specifically mention in 125-3a "Additionally where land is to be sub-divided", so it is referring... There's at least the word "sub-divided" in reference to land within a flood plain, so we're left with some language; again, if you just looked at that, the conclusion would be, well, this contemplates sub-dividing land within the flood plain; but then when you go to our sub-division ordinance, it seems to indicate that you can sub-divide land within a flood plain; but not for residential purposes. Construing all that together, I'm left to conclude that it's not supposed to be a residential sub-division. The process would seemingly be to go to Town Council and to get under our sub-division ordinance, you can get a... It's 188-34 and the section is called Variances - Modifications and Waivers. So seemingly that would be the avenue for somebody to go in front of Council and get a Variance Modification/ Waiver with regard to having a residential sub-division in the MR District.

Bob Kerr: Mr. Chairman, if I could ask Seth a question?

Don Mazzeo: Please.

Bob Kerr: Does it require Mayor and Council to make a determination; if it said land subject to flooding or land deemed by Town Council; this is saying "and", so do both conditions have to apply before it's a no?

Seth Thompson: It's interesting, because I looked at that language.

Lynn Ekelund: Where are you now?

Bob Kerr: I know.

Seth Thompson: In the quoted section in 188-25.

Lynn Ekelund: Oh 25, so you're not to 34.

Bob Kerr: My item 11.

Lynn Ekelund: Okay.

Seth Thompson: The appearance of the word land in both places, seems to indicate that it's both; that it applies to both; so in essence, neither should be plotted for residential occupancy. I can see the argument if it said land subject to flooding and deemed uninhabitable. At that point you would say, okay, well it has to be both; but here it seems to say land subject to flooding and lands deemed uninhabitable.

Don Mazzeo: Any other comments, questions, concerns? I will entertain a motion on this application and I will pose it as a recommendation to deny application for this sub-division and again, it's a recommendation to Town Council. Recognize that Town Council does not have to agree with our recommendation. I say that right from the get go. So there's a motion on the table to deny application for this sub-division. Do I have a second?

Linda Edelen: I second.

Don Mazzeo: All in favor... Let's do a roll call vote:

Linda Edelen

Seth Thompson: If you could state your reasoning, as well.

Don Mazzeo: The reason why you are voting as you are.

Linda Edelen	My reasoning is based upon the reading of Article 188-25, the sub-division ordinance which speaks to land subject to flooding of which this property is.
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Lynn Ekelund	I also vote to deny based on the same reasoning as Ms. Edelen which is Section 188-25, land subject to flooding, uninhabitable land
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Don Mazzeo	For the very same reasons
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Don Mazzeo: Recommendation to Council to deny. This motion passes. Application is denied. However, as I stated in the record the applicant still has the opportunity to present case to Council in some form or fashion; I'm not sure how that proceeds, to be honest with you. But that's where we are this evening. Thank you for your participation this evening.

That is all we have on our agenda this evening, however I would like a question to be posed to Robin regarding Dogfish Head where the applicant had been proceeding without final DelDOT approval of their entranceway. Has that approval been forwarded?

Robin Davis: No. They've not started the building yet. Before the building plan review, the building was approved as far as the Building Code; they're still waiting on the Fire Marshall. Evidently there was a fire pump design requirement that Delmarva Power was working on and finally got it to them and the Fire Marshall said it would probably be about thirty days so the building permit has not been issued. They were doing some land work out there; removal of trees and things like that.

Don Mazzeo: Okay, that still is pending. When you see that, then it's going to come back to the commission, I believe?

Robin Davis: I think that's how it was designed.

Don Mazzeo: Okay, thank you very much.

Robin Davis: With that said, I can't remember if that said they cannot start building for the stipulation of what could happen or what couldn't happen.

Don Mazzeo: Perhaps we need to revisit that during the week here and determine what is eligible to continue going. As I understand it, they've got some very heavy equipment en route and perhaps they might want to put it someplace indoors; if they haven't got it... Anyway, we need to proceed with the recommendations as they were written to make sure that

all the appropriate signatures are in place and to make sure that they don't do something ahead of time, without those approvals; recognizing that they're probably going to be good, but I don't want to be out of line here. That's all.

Robin Davis: Yes, I had received something from DelDOT. I think it was the actual wording was a semi-final approval for the entrance plan.

Don Mazzeo: I won't even ask that question. Semi-final. Okay.

Lynn Ekelund: Oooh.

Don Mazzeo: Are there any other questions or comments this evening for Planning and Zoning commission? Seeing none, I'll entertain a motion for adjournment.

7. Adjournment

Lynn Ekelund: I make a motion to adjourn at 7:35 p.m.

Linda Edelen: Second.

Don Mazzeo: We have a motion and a second to adjourn. All in favor say aye. Opposed. Motion carried. Thank you ladies and gentlemen.